CHAPTER 1
INTRODUCTION

Dr. Hema Doreji of Tehran University continues her protest despite being dismissed from service for protesting against the dress code imposed upon women in Iran. But due to continuous harassment of the system she has to choose the path of self-immolation. Deva Langjom working for the independence of Tibet is being arrested by police and her breasts are brutally cut off as a punishment for opposing system. Another activist Sonam Dolkar is being tortured brutally. She is beaten and electric shocks are given to her private parts. Several such incidents have been published by Amnesty international in 1995 in a report titled “HUMAN RIGHT IS WOMENS RIGHT.” All those incidents along with the stories of Bhavani Devi show the inhuman face of the system which refuses to accept woman as a human being.

The United Nations Organisation (U.N.O.) was trying to build a society that provides equality to all by the year 2000. For this it has been decided that each and everyone must have right to freedom and expression, protection against injustice and freedom for development. But it is very unfortunate to know that a very short distance has been covered as far as equality and justice are being considered in reference to women. Women are still far away from fundamental right of self development is this age of scientifically developed world. Human right is still considered a right of man and unfortunately it is still a natural proposition. Second misconception about human rights is that the whole concept of human right that has been developed for defending the right of freedom and self respect of human being is now days limited to the demand of self right and political right. This is why where a lot of hues and cries have been made on international stages about the freedom of Kashmir; there is no one accountable for the state sponsored tortures against the women of Uttarakhand. For this unaccountability, there are not only violations of human rights of women in almost all the countries of world but they are kept out of parameters of human rights.
For the first time *The United Nations Development Programme, 1995* (U.N.D.P) in its Human Development Report – 1995 fixed parameters for women development in its human development index. Beside three parameters of human development namely – mortality rate, literacy and income standard the representation of women in Parliament and legislation and in decision making are taken into account in 116 countries. On the basis of this report it came into light that economic development and equality among men & women are not co-related. In countries like Cuba and China, where women got equal opportunities in fields of education and health, there total development is satisfactory despite per capita income being low. In fact the condition of a woman depends upon the power structure and mental condition of dominant group. Women cannot lead an independent life until the social system can be converted into a democratic one.

It is a well known fact that, violence either state sponsored or due to indifferences of social forces has its utmost effect directly or indirectly on the life of women. Globally most of the cases of human right violence are associated with sexual difference and sexual violence. According to report of UNICEF more than one million female children are killed only because they are considered inferior than their male counterpart. Another study of UNICEF indicates that in approximately 20 countries of Africa, Central-East Asia and adjoining areas of Europe there is a system of deformation of private part of female child as prevent in Islamic rituals of Sunnat. Due to this almost two million girls go through this brutal ritual every year. It is a matter of great concern that despite several campaign of WTO against these customs, today’s doctors and nurses are involved in it. It is amazing to note that the representation of women in administrative council of United Nations Organization (U.N.O), the chief advocate of equality and freedom of women is merely 15% whereas in 96 developed countries, this percentage is merely 10%. These entire incidents are related to that aspect of human right which is seen only in figures. This hidden aspect of exploitation and inequality emerging from power structure of society tries to shake the self confidence of women to make them inferior. On domestic front, from India and Bangladesh to the developed nation like America, women are always subjected to domestic violence or are skeptical to it. Women are subjected to
ill treatment by state administrative machinery, police and even law and this makes them vulnerable to all kinds of insult and injustice. Even the simple human rights of asking question and protesting wrong deeds of women are so suppressed that women advocating for these rights are looked down upon even by women fellows.

In midst of all these lives of women have suffered all the more by things likes female foeticide, custom of sati, dowry system, child marriage, forcible prostitution and sexual exploitation. Women are not even given the required nutrition, health and education necessary for a balanced human life. They are given whatever has been left after fulfilling the requisites of father, son and husband. In 30-40 years whatever the society has developed in respect of educating women, the point is always that the education is not for her but for the men folk. Women are not given permission for education and to do job if men are not burdened by economic and other pressure.

All the above discussed dimension related with the women issues can be categorized into three aspects: a) Violence, b) Denial and c) Deprivation.

a) Violence: Violence can be in parental or in matrimonial houses, or at workplace or else where in society.

b) Denial: It comes as denial of the rights to be born, denial of nutrition, education, health, home and property etc.

c) Deprivation: Deprivation results from debarring them from several opportunities of empowerment – political, economic or carrier wise. Also important are the question of women in mental asylum, single women and so on.

As things stand now, the best indication where the above discussed violence, denial and deprivation against woman’s right is shown is the Prison. Female prisoners constitute a very small proportion of the total prison population of the country. Women in the prison are the disadvantaged losers in our complex and competitive society. "Human Rights of women prisoners," the concept itself is very interesting to adjudge the matter of violence, denial and deprivation of rights of women in jails.
The parameter to adjudge these matters in any field depends on the meaning of the term human rights. Actually human right and human dignity can’t be separated from each other. A pre-requisite for human dignity in a civilized social order is therefore the need for a stabilized social order by way of removal of all kinds of injustices—social, political or economic. Human rights are therefore that eternal part of the nature of human beings which are essential for individuals to develop their personality, human quantities, intelligence, talent and conscience so as to enable them to satisfy their spiritual and other higher needs. These are those inalienable rights which belong equally to all members of the human family and as such, should be protected by rule of law if a man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression.

The concern for Human Rights is a coveted theme world wide today, for the dignity of man has been given divergent connotations by different societies. Moreover, political systems lack a uniform set of scale in this regard. The political order must ideally initially guarantee a peaceable enjoyment of life in a secular way and hence the basic approach accordingly does demand a proof of will by the governments that their actions have a justification in the regime of law directed towards human rights in a stabilized social order. An individual cannot match the organized state power either in terms of money or sources. The various agencies which are set up for purposes of administration can have a hidden bias against an individual and in favour of the establishment, to zealously promote law and order. The modes and manners for a subdued living by an individual are considered as an art by the state and its machineries. It is to counter such attitudes and actions that a campaign for establishment of human rights has become an issue of utmost importance today.

Historically, origin and development of human rights are very fascinating. We can trace its origin back to the times of ancient Greeks. We have got the smell of Human rights as natural rights in Greek play Antigon. In this play Sophocles describes that Antigone’s brother, while he was rebelling against the king, was killed and his burial was prohibited by the king Creon. In defiance of the order, Antigone buried her brother.
When she was arrested for violating the order she pleaded that she had acted in accordance with the "immutable, unwritten laws of heaven" whichever the king could not override.\(^1\) In philosophy the development of the notion of natural rights of man were contributed by the stoic philosophers. They first developed natural law theory and by virtue of it they explained two natures of human rights that are rights which every human being possesses virtue of being human. However it may be noted that citizens of the Greek City states enjoyed some basic rights even before the formulation of natural law theory by the stoic philosophers. These were in particular: (i) The right to freedom of speech (Isogoria) (ii) The right to equality before law (Isonomia) and (iii) right to equal respect for all (Isotimia).\(^2\) The stoic formulation of natural law was best suited to the Roman temperament, for they, in principal, believed that man should improve himself both rationally and morally. Writing about natural law, Cicero (1065-43) B.C. like stoic philosophers, laid emphasis upon the universal nature of it and said that natural law is of "universal application, unchanging and everlasting". It is a sin to try to alter this law, nor is it allowable to attempt to repeal any part of it, and it is impossible to abolish it entirely.

In the middle age, the scholastic philosophers like Abelard (1079-1142) and Thomas Aquinas (1224-1274), the most original thinkers of their times laid stress upon the concept of natural law as the higher principals of law to be derived from reason. But they did not go in quest of making the human personality as the main concern of law and social life. Again a set back was also caused during 16\(^{th}\) century to the development of the concept of natural rights by Machiavelli’s teachings. He was opposed to the concept of natural law and supported absolute monarchy.

The doctrine of social contract has linked a new period in the development of natural law because for both the basis were same. Philosophers like Thomas Hobbes (1558-1679), John Locke (1632-1704) and Jean Jacque Rousseau (1791-1778) have given new direction to the natural law through social contract doctrine. Later on

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American Revolution, French Revolution, have given a new look to the Human Rights and finally after end of First World War, Institute of International Law, initiated measures to study and formulate due Human Rights provisions. Proclamation of Right of Man was issued by it in 1929 and from then still now it is developing. United Nation efforts to establish the concept of human right is unforgettable.

United Nation has done a lot to develop the standard of human dignity and human rights but to protect the human rights of women prisoners, legislatures from almost all the part of the world have started their efforts to rescue the women from this distress. The aim and object of the every legislative system in this regard are equal. They all are equal in their thoughts that the women prisoners should must have to some extent liberty to designate their human dignity and to identify their human characters in different fields. The legislative measures are prescribed by different cubbies to regulate the prison system and trial system of their own notions for women prisoners. Legislative measures the other factors are also essential to regulate these systems.

Law enacted by legislatures (Parliament and State Legislatures ) are not able to ensure complete justice in all causes of our society. It is known very well that justice is one of the prime needs of a civilized society; but it is also true that the law changes as per changing needs and aspiration of people. That is why it is claimed that law by legislatures sometime fails to provide justice. When such situation arises the function of Hon’ble judges of the Court begins, as Hon’ble Judges of Supreme Court with their extraordinary legal acumen, innovative vision have endeavoured to fill up the blank existing between law and justice by way of pronouncing their need through interpretation of law to meet with concurrent needs and situations of the people. At times the judgments of the Supreme Court become law having binding effect on all subordinate courts as prescribed by Article 141 of the Constitution of India. Several new legal principles were laid down in this process to alive and activate the system of justice in order to ensure protection of human and social justice. Many judgments of the Supreme Court contain detailed guidelines concerning criminal justice, human rights, prison reforms, protection of human rights of women prisoners etc.
In the words of Justice P.N. Bhagwati "the judiciary has become the bastion for protection of new freedom and promotion of social justice in democratic societies." In spite of extreme poverty, wide spread disparity in incomes and levels of living Article 21 assumes the right to life with human dignity free from exploitation. Therefore state is under a constitutional obligation to see that there is no violation of fundamental right of any person, particularly weaker sections of community and is unable to wager a legal battle against a strong and powerful opponent who is exploiting him. In facet of new approaches and strategies for providing access to justice to the large masses of Indian Humanity who have been exploited for centuries together and in particular the women prisoners, some questions have compelled the researcher to do work taking up this issue and involving these questions inter alia:

(i) Is woman prisoner a human?  
(ii) If a woman prisoner is a human, then what kind of Human Right she possesses?  
(iii) Are the existing legislative and judicial contributions sufficient for women prisoners?  
(iv) If yes, why not implemented?  
(v) If no, what should be done?

For this research work, the Researcher has chosen empirical survey to assess the real scenario of the proposed field because she thinks that empirical or Non Doctrinal Research is important and beneficial for this kind of research work due to the following reasons:

(i) it solely relies on observation and experiment, not on theory.  
(ii) It is carried out by collecting and gathering, data on information by first hand study into universe.  
(iii) It tries to find out impact of non legal events upon the legal decision process.  
(iv) It seeks to identify and appraise the degree of variables influence, the outcomes and legal decision making and
(v) It tries to find out the effect of each decision on people and society as such that is more important is given to the society and people.

(vi) It is an inquiry that attempts to discover and verify general rules allowing everyone to understand why human beings behave the way they do. The methods like observation, interview, questionnaire survey and case study are used to discover the human conduct.

Therefore the whole research project is classified under following heads:-

1) Introduction
2) Human Rights Law – Discussion on women protection with special reference to International Law.
3) Women Protection and Law in India.
4) Judicial response towards women protection with reference to prisoners.
5) An empirical survey of prisons to assess the plight of women prisoners
6) Conclusion.